D.B. CENTRAL EXCISE APPEAL NO. 7/03
(Guljag Industries Ltd. Vs. Union of India & Ors.)

DATE : 11.1.2007

HON'BLE MR. RAJESH BALIA,J.
HON'BLE MR. CHATRA RAM JAT,J.

Mr. Rajendra Mehta, for the appellant.
Mr. V.K.Mathur, for respondent.

Heard learned counsel for the parties. At the time of admitting the appeal on 12.12.2003, the following substantial questions were framed:

> (1) "Whether in the facts and circumstances, the Tribunal was justified in denying the Modvet Credit claim of the appellant merely because the appellant has at an early stage classified the storage tank under Tarrif Chapter 73 and extending the requirement of Sub-clause (1) of Clause (a) of Rule 57AA to the goods falling in other clauses of Rule 57AA?"
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> (2) "Whether mere wrong mentioning of classification by appellant could result in depriving him of the benefits of the Modvat Credit Facility for the capital goods falling under other clauses of Rule 57AA?"

The principal question that arises for consideration in this appeal is whether the storage tank, motor rails & plat forms in question, which

according to the appellant-manufacturer was wrongly classified by him fall under Chapter 73.09 by taking it to be storage of general use, though he has later on claimed classification under Chapter 84.19 inter alia on the ground that storage tank concerned, is actively used for manufacturing activity of the plant and is an integral part of the manufacturing process, therefore, ought to have been classified under Chapter 84.19.

The modvat credit in respect of inputs/capital goods used for construction of tank has been disallowed by the Adjudicating Authority by taking the classification of the article in question under Teriff Chapter 73.

The Commissioner (Appeals) allowed the claim of manufacturer by treating it to be falling under Teriff item under chapter 84.

The Tribunal has restored the order of Adjudicating Authority solely on the ground that classification once opted by the manufacture cannot be altered.

We find from the perusal of the three orders that at no stage the assessee's claim about the proper classification has been adjudicated by any authorities and merely on the basis of assessee's earlier claim a later claim has decided the matter without examining the issue.

Learned counsel for the appellant states that earlier claim to a particular classification by the manufacturer does not stop him from claiming correct classification under different head by pointing out that the classification claimed was erroneous. Once he has made such claim his objection is required to be adjudicated.

Since the modvat credit availed by the appellant as per his claim has been disallowed without adjudicating the core issue by the authorities under the Terrif Act, the order of the Tribunal cannot be sustained.
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This contention on perusal of orders is justified. Hence, we deem it just and proper to set aside the order of the Tribunal and the authorities below

and send the case to Adjudicating Authority to first decide the question of proper classification of the articles in question and on that premise consequential order about modvat credit may be determined.

The appeal is accordingly disposed of. No costs.

(CHATRA RAM JAT),J. **(RAJESH BALIA),J.**

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